IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9384 OF 2003

Ms.Gauri Godse for the Petitioner.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 8TH JUNE,2005

P.C.:

By order dated 27-1-2004 the court has issued notice of final disposal in this petition.

1. The Petitioner by this petition challenges the order passed by the trial court rejecting his application for restoration of the suit which was dismissed for default for appearance. The case of the Petitioner was that he was under an impression that the proceedings in the suit have been stayed. The learned Counsel appearing for the

Petitioner submits that the Petitioner got that impression because of the order sheet maintained by the clerk of the court. It is also case of the Petitioner that the advocate for the Petitioner for his personal difficulty did not attend the court, as a result the suit came to be dismissed for default.

2. Respondents have been served. Affidavit in reply has also been filed.

3. Though the explanation that is given by the Petitioner for not remaining present in court cannot be termed as convincing, in my opinion, considering that it is the suit of the Plaintiff which has been dismissed for non-prosecution and willingness of the Plaintiff to pay substantial costs, it will be in the interest of justice to restore the suit so that the Plaintiff can get an opportunity of being heard on merits. In my opinion, following order would meet the ends of justice.

O R D E R

(a) The order impugned in the petition is set aside. Spl.Civil Suit No.27 of 1994 is restored to file, subject to payment of costs of Rs.10,000/- by the Plaintiff to the Defendant.

(b)The Plaintiff shall deposit the amount of costs in the trial court within a period of six weeks from today.

(c) The Plaintiff shall serve a copy of this order on the Respondent. The Plaintiff shall also effect fresh service of the suit summons on the Defendant.

(d) The trial court shall, after the Plaintiff effects service of the summons on the Defendant, proceed with the suit and decide it in accordance with law.

(e) It is clarified that payment of

costs is condition precedent. If the Petitioner does not deposit the costs as directed above, this petition shall be treated as dismissed.

(f) On the costs being deposited, the trial court shall permit the Respondent to withdraw the costs.

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